Supreme Court, U. S.
FILED
JAN 7 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-723

SHELBY COUNTY GOVERNMENT,

Petitioner,

VERSUS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION

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Petitioner, Shelby County Government, replies to Respondent's Brief in Opposition to Petition for Certiorari as follows:

As the Petition for Certiorari in this case demonstrates, this Court should review the improper decision of the Court of Appeals for the Sixth Circuit which allows the EEOC to expand the scope of its investigation of the charge of Hughley Moore, Jr. beyond matters which are relevant to the charge. Despite respondent's attempts to justify the decision of the court of appeals, that decision remains in conflict with decisions of other circuits and in conflict with the letter and intent of provisions of Title VII of the Civil Rights Act of 1964.

The EEOC asserts in its Brief in Opposition that a large number of charges of discrimination have been filed against various departments of Shelby County Government, giving rise to an inference of "pervasive" or "systematic" discrimination by the County Government as a whole. However, the EEOC fails to point out that it has made a determination that there is no reasonable cause to believe that discrimination exists in twenty-one (21) of the thirty-two (32) investigations it has completed upon such charges. [Jt. App. 59 and 70 (H)]. In the face of its own determination of no discrimination in case after case, the EEOC cannot sustain a contention that these thirty-two (32) charges demonstrate pervasive discrimination which would support the unlimited county-wide probe it now seeks to undertake. Its investigation must now be focused on the charge of Hughley Moore, Jr., rather than upon other charges of discrimination which it has already

determined favorably to the various departments and agencies of the County which were involved.

The EEOC admits in its Brief in Opposition that of the thirty-five (35) charges other than the charge of Hughley Moore, Jr., only one purported to be filed against Shelby County Government as a whole. The remaining thirty-four (34) charges were filed against various departments or agencies of government which hired those employees and which are responsible for the action of those employees. This approach, which was consistently followed prior to this case, indicates that virtually all of the employees involved perceive that employment practices and policies emanate from the heads of various departments and agencies, rather than from a central County authority. There is no such central County authority to whom all County employees are accountable, and the mere language used in the charge filed by Hughley Moore cannot alter practices as they actually exist.

The EEOC also seeks to support a county-wide probe by citing provisions of the Tennessee Private Acts which establish a civil service system and appoint a personnel director, but respondent fails to point out to the Court that the County's policies are not as centralized as it implies. The Private Act to which respondent refers provides:

> [The Personnel Director] shall *when called upon to do so by the several departments* under the direction and supervision of the County Commissioners and the County officers enumerated in Section 27 hereof seek out, interview and *recommend for employment* to the several departments and offices persons to fill the personnel requirements of said departments and offices.
>
> 1957 Tenn. Priv. Acts,
> Ch. 279, §30 (Sen. Bill No. 728)
> (Emphasis supplied.)

Under this provision the personnel director becomes involved in personnel decisions only if he is invited to do so by an official in the department which is seeking an employee. Furthermore, the personnel director's participation is limited to the making of recommendations. Decisions concerning employment and conditions of employment are not made by a centralized process, but are made by the individual departments for which the employees work. By any reading, this act does not prove otherwise.

Under these circumstances the Sixth Circuit should have followed the lead of the Tenth Circuit in *Joslin Dry Goods Co. v. EEOC*, 483 F.2d 178 (10th Cir. 1973) and of the Fifth Circuit in *EEOC v. Packard Electric Division, General Motors Corp.*, 569 F.2d 315 (5th Cir. 1978), by limiting the scope of the EEOC's investigation to "that employing unit or work unit from which came the decision of which the individual complainant complains." *Id.* at 318. The district court took this course of action, and by its reversal, the Court of Appeals for the Sixth Circuit has placed itself in conflict with the Fifth and Tenth Circuits.

In this case the County has already granted the EEOC access to records of the County Personnel Department, County Administrative Office, and County Insurance Office, with all of which the District Court found the claimant, Hughley Moore, Jr., had a "basis or connection." These departments constitute Hughley Moore, Jr.'s work unit or employing unit within the rationale of the *Joslin Dry Goods* and *Packard Electric Division* cases. The EEOC should not be allowed access to records of entirely separate employing units with which Hughley Moore, Jr. has no connection. Hughley Moore, Jr. has no connection with employment decisions or practices relating to guards at the Shelby County Penal Farm, deputy clerks at the Shelby

County Circuit Court, nurses at a Shelby County hospital, teachers at a Shelby County school or any of the other departments or agencies for which the approximately 6,000 employees of the Government work. (Jt. App. 16).

WHEREFORE, certiorari should be granted as prayed to review the decision of the Court of Appeals for the Sixth Circuit which allows the EEOC, contrary to the decisions of other circuits and the provisions of Title VII, to investigate employment practices which are not relevant to the charge under investigation.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of January, 1980, three copies of the foregoing Reply to Brief in Opposition have been mailed by United States mail, postage prepaid, to Sharon Danch, Attorney, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C., 20506, counsel for respondent, and Solicitor General of the United States, Department of Justice, Washington, D.C., 20530. I further certify that all parties required to be served have been served.